

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No.3163 of 2006

Mrs.Shanti Dashrath Kasbe ..Petitioner

vs.

1. Samsher Brothers Pvt.Ltd.
and others ..Respondents

Shri A.A.Kumbhakoni i/b Shri I.M.Khairdi for petitioner
Shri P.A.Walame, C.A. of respondent no.1 present.

CORAM: S.B.MHASE J.
5th May, 2006

P.C.

1. Heard the learned Counsel for petitioner and the
Constituted Attorney of respondent no.1.

2. Special Civil Suit No.680 of 1977 was filed by
respondent no.1 as against respondent nos.2 to 9d in
respect of survey no.3/2 and one more property. The
present matter relates to survey no.3/2. The said suit
was decreed and declaration has been granted in favour
of respondent no.1 that he is the owner of the said
property. On the basis of the said decree, Special
darkhast no.143 of 1993 has been filed and possession
warrant has been issued as against the petitioner and
respondent nos.2 to 9d. The petitioner is the purchaser
of 10 Ares of land out of the said property pending the
suit and, therefore, the petitioner has opposed
execution of the possession warrant and has filed an
application under Order XXI Rule 97. That application
was rejected by the Civil Judge, Sr.Dn., by order dated

1st April, 2006. Being aggrieved by that order First Appeal No.307 of 2006 under Rule 103 of Order XXI has been preferred by the petitioner. In that appeal application at Exh. 3 was submitted for interim stay of possession warrant. Initially by order dated 15th April, 2006 exparte order was granted but after hearing the parties by order dated 24th April, 2006 application Exh.3 from Civil Appeal No.307 of 2006 was rejected by the 10th Ad-hoc Additional District Judge, Pune. Therefore, the petitioner has approached to this Court. Respondent no.1/original plaintiff is present in Court. I have heard both sides. It will be inappropriate at this stage to enter into the merits of the matter since the first appeal is pending wherein all these questions of facts and law are required to be considered by the First Appellate Court. Therefore, this court finds it proper to maintain the statusquo while the first appeal is pending and the Appellate Court is further directed to dispose of the first appeal within a period of three months from the date of receipt of the order in the Appellate Court. Shri P.A.Walame on behalf of original plaintiff/respondent no.1 who is present in Court has no objection for such course also. Therefore, it is hereby directed that the order dated 24th April, 2006 is hereby set aside and the parties are directed to maintain statusquo in respect of the suit property till final hearing of the first appeal no.307 of 2006 pending before the 10th Adhoc Additional District Judge, Pune. It is further directed that the petitioner shall see that all the respondents in the said appeal except

respondent no.1/original plaintiff are served on or before 30th June, 2006 by taking appropriate steps to serve them either by way of court service and/or by way of substituted service either affixing the summons at their address and/or by publication in the widely circulated local newspaper. Respondent no.1/original plaintiff states before this Court that he has already appeared in the proceedings and he will appear in the proceedings. The petitioner is further directed to prepare the paper book as per the requirement of law and submit it with the First Appellate Court on or before 30th June, 2006. The Appellate Court is hereby directed to dispose of the first appeal within a period of 3 months and in any eventuality before 31st August, 2006. With these directions the petition is disposed of.

(S.B.MHASE J.)